

(2000) 05 MP CK 0036

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1053 of 1988

Dr. Santosh Kumar Dey (Decd.) (through legal representative
Debashish) APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 11-05-2000

Acts Referred:

Income Tax Act, 1961 — Section 139, 147

Citation : (2000) 245 ITR 277 : (2000) 113 TAXMAN 6

Hon'ble Judges : N.K. Jain, J

Bench : Single Bench

Advocate : P.M. Choudhary, for the Appellant; R.L. Jain, for the Respondent

Judgement

N.K. Jain, J.—The petitioner who is an assessee both under the Income Tax Act and Wealth-tax Act, by this petition under Articles 226 and 227 of the Constitution of India calls in question two notices both dated March 18, 1988 (vide annexures P-11 and P-12), issued by the respondent--income tax Officer, H-Ward, Circle-I, Indore, u/s 147(a) of the Income Tax Act, 1961 (as it stood before the amendment of 1987), calling upon the petitioner to submit fresh returns of his income for the assessment years 1984-85 and 1985-86.

2. At the outset it may be noted that the practice of this court has been not to interfere in such matters at the stage of issuance of notice and leave the aggrieved party first to answer such notice and exhaust the alternative remedies provided under the ordinary law before invoking the extraordinary jurisdiction of this court under Article 226/227, However, in the instant case, it is noticed that the present petition stands admitted way back in 1988 and the petitioner has challenged the very jurisdiction of the Income Tax Officer, Indore, to issue the impugned notices. I, therefore, proceed to examine the merits of the case so as to find out whether any ground as envisaged u/s 147(a) existed for exercising jurisdiction under the aforesaid provision.

3. The factual matrix of the case lies in a narrow compass. The petitioner, the

late Dr. Santosh Kumar Dey (he has died during the pendency of this petition and is now represented by his son, Debashish), was assessed under the Income Tax Act for the assessment years 1984-85 and 1985-86 by the Income Tax Officer, Indore, vide his orders dated November 20, 1984, and September 28, 1987 (annexures P-9 and P-10). The order (P-9) was passed u/s 143(3) of the Income Tax Act, while (P-10) was made u/s 143(1) of the Act. The returns submitted by the petitioner for the aforesaid two years were accompanied by the computations of the income (vide annexures P-1 and P-2) which clearly showed the capital gains received by the petitioner by the sale of his immovable properties. The copies of the sale deeds together with the valuation reports (vide annexures P-3, P-4, P-6 and P-7) were also annexed to these computations. The returns were duly acknowledged by the Income Tax Officer, vide acknowledgments P-5 and P-8. The Income Tax Officer finally passed orders P-9 and P-10.

4. The dispute centres around the capital gains received by the petitioner by way of sale of his immovable properties. The respondent while issuing impugned notices (P-11 and P-12), has recorded his reasons (vide annexures R-1 and R-2) that the income from the sale of immovable properties shown by the petitioner was not disclosed fully and truly inasmuch as the sales in question were made in favour of his own close relations and that the prevailing market price of the properties was much more than what was indicated in the sale deeds and the returns. The learned Income Tax Officer drew the aforesaid inference on the basis of certain facts discovered by him while assessing the petitioner under the Wealth-tax Act for the assessment year 1983-84.

5. I have heard Shri P.M. Choudhary, learned counsel for the petitioner, and Shri R.L. Jain, learned counsel for the respondent.

6. The relevant Clause (a) of section 147 of the Income Tax Act, as it stood before the amendment of 1987 (with effect from 1st April, 1989), reads as follows :

"147. If-

(a) the Assessing Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return u/s 139 for any assessment year to the Assessing Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or ...

he may, subject to the provisions of Sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned (hereafter in sections 148 to 153 referred to as the relevant assessment year)."

7. A reading of the aforesaid provision would show that for assumption of jurisdiction by the Income Tax Officer to initiate proceedings u/s 147(a) of the Income Tax Act, two conditions must be satisfied :

(i) that the Income Tax Officer must have reason to believe that the income chargeable to tax has escaped assessment ; and

(ii) that he must have reason to believe that such income escaped assessment by reason of omission or failure on the part of the assessee :

(a) to make the return u/s 139 of the Act ; or

(b) to disclose fully and truly material facts necessary for his assessment for that year.

8. In the present case we are concerned only with the condition (ii)(b), i.e., failure on the part of the assessee to disclose fully and truly material facts necessary for the assessment inasmuch as it is this failure which is attributed to the petitioner by the Income Tax Officer.

9. In the instant case, the petitioner had not only disclosed the facts relating to sale of his immovable properties but also filed true copies of the sale deeds along with his returns and computation sheets. The sale deeds contained all necessary particulars, i.e., full description of the properties sold, the names and other particulars of the purchasers and the sale price for which the sale was effected. All basic and primary facts were placed before the Income Tax Officer for making the assessments for the relevant years. Whether or not the sale price indicated in the sale deeds was correct and commensurate with the prevailing market price of such property, was a question of inquiry and inference to be made by the Income Tax Officer.

10. Certainly the petitioner was not expected to say that the price indicated in the sale deeds was much lower than the actual market value of the property.

11. The Supreme Court in *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, while construing a similar provision of section 34 of the old Indian Income Tax Act, 1922, held (headnote) :

"(ii) That the words 'omission or failure to disclose fully and truly all material facts necessary for his assessment for that year', used in Section 34 postulated a duty on every assessee to disclose fully and truly all material facts necessary for his assessment. What facts were material and necessary for assessment differed from case to case. In every assessment proceeding, the assessing authority would, for the purpose of computing or determining the proper tax due from an assessee, require to know all the facts which help him in coming to the correct conclusion. From the primary facts in his possession, whether on disclosure by the assessee, or discovered by him on the basis of the facts disclosed, or otherwise, the assessing authority had to draw inferences as regards certain other facts ; and ultimately from the primary facts and the further facts inferred from them, the authority had to draw the proper legal inferences, and ascertain, on a correct interpretation of the taxing enactment, the proper tax leviable. So far as primary facts were concerned, it was the assessee's duty to disclose all of them--including particular entries in account

books, particular portions of documents, and documents and other evidence which could have been discovered by the assessing authority, from the documents and other evidence disclosed. The duty however did not extend beyond the full and truthful disclosure of all primary facts. Once all the primary facts were before the assessing authority, it was for him to decide what inferences of facts could be reasonably drawn and what legal inferences had ultimately to be drawn. It was not for anybody else--far less the assessee--to tell the assessing authority what inferences, whether of facts or law, should be drawn."

12. The Division Bench of this court in Smt. Prabha Rajya Lakshmi Vs. Wealth-tax Officer, A-Ward and Another, while dealing with a similar provision of Section 17(1)(a) of the Wealth-tax Act, 1957, held (headnote) :

"Held, that the petitioner had disclosed the valuation of her lands on the basis of her earlier valuations and had also disclosed the fact about sales of parcels of land during the previous years relevant to the assessment years in question. If the Wealth-tax Officer doubted the correctness of the valuation, it was open to the Department to get the same valued by its own valuer or to have recorded evidence about the real market value of the lands on the valuation date. As the petitioner had placed all the primary facts before the Wealth-tax Officer for the relevant assessment years with regard to the value of the agricultural lands, there was no failure on the part of the petitioner which would give jurisdiction to the Wealth-tax Officer to reopen the assessment u/s 17(1)(a). Therefore, the notices issued by the Wealth-Lax Officer were not valid."

13. As already pointed out, the petitioner in the instant case had disclosed all primary and basic facts while submitting his returns for the assessment years 1984-85 and 1985-86. In case the Income Tax Officer entertained any doubt as to the correctness of the sale price indicated in the sale deeds, it was open to the Revenue to get the same valued by its own valuer or make other enquiries necessary to ascertain the correct valuation. Section 52 of the Income Tax Act, as it stood before its omission with effect from April 1, 1988, gave ample powers to the assessing authority to make necessary enquiries and substitute a fair market value of the capital assets on the dates of such transfers. So far as the petitioner is concerned, his only obligation was to place the necessary basic facts before the Income Tax Officer for the relevant assessment years with regard to the value of the properties sold by him, The petitioner having done so, there was no failure on his part which would give jurisdiction to the Income Tax Officer to reopen the assessment u/s 147(a). The two notices (annexures P-11 and P-12) issued by the respondent-income tax Officer are, therefore, liable to be quashed.

14. In the result, this petition succeeds and is allowed. The two notices (annexures P-11 and P-12) are quashed. No order is, however, made as to the costs of this petition. Security amount, if any, be refunded to the petitioner after verification.